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AOC  
12/9/94

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

IN THE MATTER OF:	)	ADMINISTRATIVE ORDER ON
	)	CONSENT FOR REMOVAL
	)	ACTION
SAAD TROUSDALE ROAD SITE	)	U.S. EPA Region
NASHVILLE TENNESSEE	)	CERCLA
	)	Docket No. 95-6-C
ALUMINUM COMPANY OF AMERICA,	)	Proceeding Under Sections
Respondent	)	104, 106(a), 107 and
	)	122 of the Comprehensive
	)	Environmental Response,
	)	Compensation, and
	)	Liability Act, as amended,
	)	42 U.S.C. §§ 9604,
	)	9606(a), 9607 and 9622

I. JURISDICTION AND GENERAL PROVISIONS

This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Aluminum Company Of America (ALCOA) the Respondent. This Order provides for the performance of the removal action by Respondent on the property located at 3655 Trousdale Road in Nashville, Tennessee the "Saad Trousdale Road Site" or the "Site". This Order requires Respondent to conduct the removal action described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

This Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-C and 14-14-D: Cost Recovery and to the Director, Waste Management Division by EPA Region IV Delegation No. 8-14-13.

EPA has notified the State of Tennessee (State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

EXHIBIT 3

Respondent's participation in this Order shall not constitute or be construed as an admission of liability or of EPA's findings or determinations contained in this Order except in a proceeding to enforce the terms of this Order. Respondent agrees to comply with and be bound by the terms of this Order. Respondent further agrees that it will not contest the basis or validity of this Order or its terms.

## II. PARTIES BOUND

This Order applies to and is binding upon EPA, and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## III. FINDINGS OF FACT

For the purposes of this Order, EPA finds that:

1. The Saad Trousdale Road Site is located in an industrial/commercial district in Nashville, Tennessee.
2. Waste oil and solvents have been detected in soil and in groundwater on site. There is a fence around the property. However, the access to the Site is not completely limited.
3. Results of EPA sampling indicated the presence of waste oil, herbicides, methylene chloride, trichloroethylene, and other solvents, and various metals at the Site in both the groundwater and the soil.
4. Hazardous substances as defined in Section 101(14) of CERCLA and subject to the terms and provisions of CERCLA are present at the Site.
5. EPA entered into an Administrative Order by Consent dated April 11, 1990 ("original Order") with a group of approximately one hundred (100) Potentially Responsible Parties who formed a Steering Committee (Committee).
6. The Committee removed and disposed of exposed drums, tanks, and tank contents on the Site pursuant to Section VI, Paragraph 1 of the original Order.
7. The Committee also investigated an area at the Site thought to be a sinkhole and submitted a report to EPA

dated July 2, 1991, regarding the findings of the investigation pursuant to Section VI, Paragraph 2 of the original Order.

8. The July 2, 1991 report concluded that there was no discrete sinkhole at the Site but that additional investigatory and removal work was necessary in order to determine the extent of contamination at the Site and assess clean-up alternatives.
9. On July 19, 1991, the Committee submitted a proposed work plan to EPA for performance of additional work.
10. On August 22, 1991, with the approval of EPA's OSC, the Committee began field work described in the July 19, 1991, work plan.
11. Pursuant to the original Order and the schedule contained in that Work Plan, on January 13, 1992, the Committee submitted to EPA a report on the investigatory work and recommendations for further response actions.
13. The January 13, 1992, report submitted to EPA indicated continuing contamination from hazardous substances at the Site, including, but not limited to, ethylbenzene, toluene, xylene, tetrachloroethylene, trichloroethylene, PCBs, cadmium, and lead. The report recommended further removal action to address continuing contamination at the Site and proposed Soil Vapor Extraction (SVE) for this purpose. EPA and the Tennessee Division of Superfund ("TnDSF") technical personnel determined that site geology was not appropriate for SVE and that the proposed further removal action was inadequate for all of the contaminants involved. EPA and TnDSF recommended the excavation of the source of contamination as the appropriate removal action for the Site.
14. On August 12, 1992, EPA entered into a second Administrative Order on Consent ("second AOC" and, together with the original Order, the "Prior Orders") with the Committee to conduct further removal activities at the Site.
15. On July 15, 1992, the Committee submitted a proposed Work Plan to EPA for performance of additional work.
16. In October 1992, with the approval of EPA's OSC, the Committee began the field work described in the July 15, 1992, Work Plan.
17. Pursuant to the second AOC and the schedule contained in that Work Plan, on April 14, 1993, the committee submitted to EPA a report on the additional removal

action and recommendations that, other than a free product collection system, no further EPA removal action was appropriate. This technology was reviewed by EPA and TnDSF technical personnel and found to be deficient. The report further recommended that the Site be transferred to the jurisdiction of TnDSF. TnDSF expressed a preference for assuming responsibility after EPA has determined that the source of contamination has been removed. However, TnDSF will accept jurisdiction whenever EPA completes its activity at the Site.

18. On December 30, 1993, U.S. EPA responded to Respondents' report rejecting its conclusions and demanding that additional removal action be conducted.
19. Pursuant to the terms of the prior orders the Committee used reasonable efforts to negotiate Site access agreements with Ellis and Kathy Saad to allow the conclusion of the removal action at the Site, but were unable to reach any agreement with Ellis and Kathy Saad.
20. On January 4, 1994, the United States filed a Complaint seeking immediate access to the property for the purpose of conducting response actions necessary to address the release or threat of release of hazardous substances.
21. On April 7, 1994, the Court heard evidence and argument on the United States' Motion for an order in Aid of Immediate Access.
22. On May 23, 1994, the Court issued an Order and Memorandum Opinion granting the United States' motion for immediate access. The Court found that the evidence showed that there had been a release of hazardous substances at the Site, therefore, the United States' demand for entry was not arbitrary or capricious, was not abuse of discretion, and was otherwise in accordance with the law.
23. On October 5, 1994, EPA and the Committee entered into a third AOC to conduct further removal activities at the Site.
24. Pursuant to the third AOC, the Committee began excavating contaminated soil at the Saad Site.
25. Sampling conducted of the waste material during the excavation indicated that the material failed TCLP for certain solvent containing wastes, thus indicating that the material is "hazardous waste."
26. After the Committees' contractor completed the

excavation required by the third AOC there remained heavily contaminated sludge in contact with ground water.

27. On November 15, 1994, EPA informed the Committee that the remaining contaminated sludge would need to be removed before the excavated area could be filled.
28. On November 16, 1994, EPA contacted Aluminum Company of America (ALCOA), who had previously been identified as a party that had arranged for disposal or transport of hazardous substances to the Site but was not part of the Steering Committee, to request that ALCOA complete the removal of contaminated sludge on the Saad Site.
29. On December 8, 1994, ALCOA provided EPA with a Work Plan to conduct the agreed upon removal work.
30. EPA has communicated with the Committee and they have agreed that ALCOA's compliance with this Order will be considered as part of ALCOA's total contribution toward the Site cleanup.

#### IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

1. The Saad Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminants found at the Site, as identified in the Findings of Fact above, include "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
  - A. Respondent ALCOA arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

6. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment. Factors that may be considered are set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP").

These factors include, but are not limited to, the following:

a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Site due to the existence of a major spring that is located in the Grassmere Wildlife Park that is in close proximity to the Site and petroleum based contaminants have been detected in the Grassmere spring;

b. actual or potential contamination of drinking water supplies or sensitive ecosystems; this factor is present at the Site due to the existence of the contaminated sludges that are in contact with the ground water;

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Site due to the potential of rain fall which could increase the migration of contaminants from the Site;

d. the unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Order at the Site because the State lacks the authority or resources to adequately address the removal of the source of contamination;

7. The actual or threatened release of hazardous substances at or from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

#### V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Respondent shall comply with the following provisions, including but not limited to all attachments to this Order, and all documents incorporated by reference into this Order, and perform the following actions:

1. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal action required by this Order itself retain a contractor to perform the removal action. Respondent shall notify EPA of Respondent's qualifications or the name and qualification of such contractor within two (2) business days of the effective date of this Order. Respondent shall also notify EPA of the names and qualifications of any other contractors or subcontractors retained to perform the removal action under this Order at least two (2) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself to do the removal action. If EPA disapproves of a selected contractor or the Respondent, Respondent shall retain a different contractor or notify EPA that it will perform the removal action itself within two (2) business days following EPA's disapproval and shall notify EPA of that contractor's name or Respondent and qualifications within two (2) business days of EPA's disapproval.

Within two (2) days after the effective date of this Order, Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of any Project Coordinator named by Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within two (2) business days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by (all) Respondent(s).

EPA has designated Fred B. Stroud of the EPA, Region IV Emergency Response and Removal Branch as its On-Scene Coordinator ("OSC"). Respondent shall direct all submissions required by this Order to the OSC at 345 Courtland St., NE, Atlanta, Georgia 30365. EPA and Respondent shall have the right, subject to the immediately preceding paragraph, to change its designated OSC or Project Coordinator. Respondent shall notify EPA, two (2) business days before such a change is made. The initial notification may be orally made but it shall be promptly followed by a written notice.

2. Work to Be Performed

Immediately upon Respondents receipt of notice of EPA's execution of this Order, Respondents shall initiate any removal work set out

in the approved Work Plan. The approved Work Plan is hereby incorporated and made an enforceable part of this Order and is attached hereto as Exhibit A.

## 2.1 Health and Safety Plan

Within five (5) days after the effective date of this Order, the Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

## 2.2 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents, as appropriate, as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; dated January 1990.

Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this Order. Respondent shall notify EPA not less than two (2) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

## 2.3 Reporting

Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every fifteenth (15th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant



developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

#### 2.4 Final Report

Within thirty (30) days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports". The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

#### 3. Access to Property and Information

Respondent shall provide, and/or obtain access to the Site and off-Site areas to which access is necessary to implement this Order, and provide access to all records and documentation related to the conditions at the Site and the actions conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Tennessee representatives. Such access provided and/or obtained by Respondent shall permit these individuals to move freely on-Site and at appropriate off-Site areas in order to conduct actions which EPA determines to be necessary. Respondent shall submit to EPA, upon receipt, the results of all sampling or tests and all other data generated by Respondent or their contractor, or on the Respondent's behalf during implementation of this Order.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 10 ten days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorneys' fees incurred by the United States in obtaining such access.

#### 4. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for ten years following completion of the removal actions required by this Order. At the end of this ten year-period and 30 days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall provide documents and information retained under this section at any time before expiration of the ten year-period at the written request of EPA.

Respondent may assert a business confidentiality claim pursuant to 40 CFR § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). [Optional: "Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth at, 40 CFR Part 2, Subpart B."] If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

#### 5. Off-Site Shipments

All hazardous substances, pollutants, or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, pursuant to Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and the Revised Off-Site Policy, (50 Fed. Reg. 49200 (September 22, 1993)). EPA will provide information on the acceptability of a facility under Section 121(d)(3) of CERCLA and the above regulation.

Unless impracticable, prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.

#### 6. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 CFR Section 300.415(i). In accordance with 40 CFR Section 300.415(i), all on-Site actions required pursuant to this Order shall, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. (See "The Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

#### 7. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC at 404/347-3591 extension 6138 or, in the event of his unavailability, shall notify the EPA Hotline at (800)424-8802 or (404) 347-4062 of the incident or Site conditions. If Respondent fail to respond, EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify EPA's OSC and the National Response Center at telephone number (800) 424-8802. Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA Section 103(c) and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.

#### VI. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct

any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### VII. REIMBURSEMENT OF COSTS

Respondent shall reimburse EPA for all future response costs, not inconsistent with the NCP, incurred by the United States in connection with this Order. Future response costs are all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this AOC, verifying the Work, or otherwise implementing, overseeing, or enforcing this AOC. Future response costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site beginning with the effective date of this AOC.

On a periodic basis, EPA shall submit to Respondent a bill for future response costs that includes EPA's Superfund Cost Organization and Recovery Enhancement System data (SCORES Reports) and any other necessary documents which, shall serve as the basis for payment demands. Respondent shall, within 30 thirty days of receipt of the bill, remit a cashier's or certified check for the amount of the bill made payable to the "Hazardous Substance Superfund," to the following address:

U. S. Environmental Protection Agency  
Region IV  
Superfund Accounting  
P. O. Box 100142  
Atlanta, Georgia 30384  
ATTENTION: Collection Officer for Superfund.

A copy of the transmittal letter should be sent simultaneously to:

Carolyn McCall  
U.S. EPA Region IV  
345 Courtland Street N.E.  
Atlanta, Georgia 30365

Respondent shall simultaneously transmit a copy of the check to EPA 345 Courtland Street, Atlanta, Georgia 30365. Payments shall be designated as "Response Costs - Saad Trousdale Road Site" and shall reference the payor's name and address, the EPA site identification number D52E, and the docket number of this Order.

The interest for Respondent's failure to make timely payments on Future Response costs shall begin to accrue on the date of the Respondent's receipt of the bill. Interest shall accrue at the rate specified through the date of the payment. Payments of interest made under this paragraph shall be in addition to such other remedies or sanctions available to the United States by

virtue of Respondent's failure to make timely payments under this Section.

Respondent may dispute all or part of a bill for Future Response Costs submitted under this Order, if Respondent alleges that EPA has made an accounting error, or if Respondent alleges that a cost item is inconsistent with the NCP.

If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs into the Hazardous Substance Fund as specified above on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the OSC. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within days thirty (30) after the dispute is resolved.

#### VIII. DISPUTE RESOLUTION

The parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order.

If the Respondent objects to any EPA action taken pursuant to this Order, including billings for future response costs, the Respondent shall notify EPA in writing of its objections within ten (10) days of receipt of notice of such action, unless the objection has been informally resolved.

EPA and Respondent shall within ten (10) days from EPA's receipt of the Respondent's written objections attempt to resolve the dispute through formal negotiations (Negotiation Period). The negotiation period may be extended at the sole discretion of EPA. EPA's decision regarding an extension of the Negotiation Period shall not constitute an EPA action subject to dispute resolution or a final agency action giving rise to judicial review.

#### IX. FORCE MAJEURE

Respondent agrees to perform all requirements under this Order within the time limits established under this Order, unless the performance is delayed by a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work or increased cost of performance.

Respondent shall notify EPA orally within 24 (24) hours after the event, and in writing within five (5) days after Respondent become(s) or should have become aware of events which constitute a force majeure. Such notice shall: identify the event causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures. Respondent shall take all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall waive any claim of force majeure by the Respondent.

If EPA determines a delay in performance of a requirement under this Order is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondent's obligation to perform or complete other tasks required by the Order which are not directly affected by the force majeure.

#### **X. STIPULATED AND STATUTORY PENALTIES**

For each day, or portion thereof, that Respondent fails to perform, fully, any requirement of this Order in accordance with the schedule established pursuant to this Order, Respondent shall be liable as follows:

<u>Period of Failure to Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$ 500.00
15th through 44th day	\$1,000.00
45th day and beyond	\$2,000.00

Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Order. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter

in any way Respondent's obligations to complete the performance of the work required under this Order.

Violation of any provision of this Order may subject Respondent to civil penalties of up to twenty-five thousand dollars (\$25,000) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may

seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

#### **XI. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site and not reimbursed by Respondent.

#### **XII. OTHER CLAIMS**

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. Neither the United States nor EPA shall be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Except as expressly provided in Section XIV - Covenant Not To Sue, nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

This Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Respondent waives any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substance Superfund arising out of any action performed under this Order.

No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### XIII. COVENANT NOT TO SUE

Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XVIII - Notice of Completion, EPA covenants not to sue Respondent for judicial imposition of damages or civil penalties or to take administrative action against Respondent for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

Except as otherwise specifically provided in this Order, in consideration and upon Respondent's payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Respondent under Section 107(a) of CERCLA for recovery of future response costs incurred by the United States in connection with this Order. This covenant not to sue shall take effect upon the receipt by EPA of the payments required by Section VIII - Reimbursement of Costs.

These covenants not to sue are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Order. These covenants not to sue extend only to the Respondent and do not extend to any other person.

### XIV. CONTRIBUTION PROTECTION

With regard to claims for contribution against Respondent for matters addressed in this Order, the Parties hereto agree that the Respondent is entitled to protection from contribution actions or claims to the extent provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4). Nothing in this Order precludes the United States or the Respondent from asserting any claims, causes of action or demands against any persons not parties to this Order for indemnification, contribution, or cost recovery.

### XV. INDEMNIFICATION

Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action: (A) arising from, or on account of, acts or omissions of Respondent, Respondent's officers, heirs, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, in carrying out actions pursuant to this Order; and (B) for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between (any one or more of) Respondent, and any persons for performance of work on or relating to the Site, including claims on account of construction delays. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including



litigation costs arising from or on account of claims made against the United States based on any of the acts or omissions referred to in the preceding paragraph.

#### **XVI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within two (2) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. Any other requirements of the Order may be modified in writing by mutual agreement of the parties.

If Respondent seeks permission to deviate from any approved Work Plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed Work Plan modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

#### **XVII. NOTICE OF COMPLETION**

When EPA determines, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including the final report, and certifications of disposal EPA will provide notice to the Respondent. If EPA determines that any removal actions have not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

#### **XIII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

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XXI. EFFECTIVE DATE

This Order shall be effective upon signature of the Director of the Waste Management Division of EPA, Region IV.

It is so ORDERED and Agreed this 9<sup>TH</sup> day of DECEMBER, 1994.

BY: Joseph R. Franzmathes DATE: 9 DEC 94  
Joseph R. Franzmathes  
Director, Waste Management Division  
Region IV  
U.S. Environmental Protection Agency

10:11 0085

The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Order and to bind the party they represent to this document.

Agreed this 9TH day of DECEMBER, 1994.

By Richard B Kelson

Title EXECUTIVE VICE PRESIDENT

SENT BY:epa region 4 orc

:12- 9-94 : 3:32PM :

U S E P A-

553 4064:# 3/ 3

10 11 0086

The undersigned representative of Respondent certifies that they are authorized to enter into the terms and conditions of this Order and to bind the party they represent to this document.

Agreed this 9TH day of DECEMBER, 1994.

By Richard B. Nelson

Title EXECUTIVE VICE PRESIDENT

10 11 0087

RECEIVED

**SOIL REMOVAL PLAN AT SAAD SITE****DEC 09 1994**

R.W.W.

**1.0 HEALTH & SAFETY****1.1 Safety Plans**

All work performed at this site will be performed in strict accordance with CCC Group, Inc. (CCCG's) approved SITE HEALTH AND SAFETY PLAN (SHSP) and all standards, regulations and documents referenced by the SHSP. Please refer to the SHSP for details.

**1.2 Hazard Analysis**

For this site, a specific Task Hazard Description has been performed in accordance with the SHSP and appropriate Precautionary Actions will be implemented. Additionally, no employee of the contractor or its subcontractors or associates will be allowed to work on this site prior to receiving Site Specific instruction.

**1.3 Zone Delineation**

Site access points and work zones will be determined based on actual conditions at the site and in accordance with SHSP. A local area site plan is attached which delineates these zones for the site. Following approval of the site plan and prior to commencement of site work, these zones will be physically established at the site utilizing safety barricades and markers.

**1.4 Personal Protective Equipment**

Selection of Personal Protective Equipment (PPE) will be in accordance the SHSP. As a minimum, level D protection is required. All personnel at the site during excavation and tank removal operations will be respirator fit tested and have respirators immediately available for upgrade to level C, if required. No confined space entries are expected at this site. Refer to SHSP for details.

**1.5 Air Monitoring**

Air monitoring for airborne contaminants, combustible gases and oxygen levels will be conducted as required per the SHSP.

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## **1.6 Decontamination**

The key to a successful decontamination operation is to minimize the amount of contamination spread and localize the area. When equipment decontamination becomes necessary, it will be performed dry when possible or with high pressure steam, if necessary, to minimize the volume of rinseate to be handled.

CCCG will use the decontamination facilities constructed by the previous contractor for personal decontamination. It is anticipated that equipment will remain in the Exclusion Zone (EZ) from beginning to end of its use period on the site, thereby necessitating less frequent decontamination and generating less waste for disposal. At the completion of the project, the excavation equipment will be moved to the decon pad and be thoroughly decontaminated with steam.

### **1.6.1 Decontamination of Transports**

A corridor will be constructed of High Density Polyethylene (HDPE) protected by plywood through the Contamination Reduction Zone (CRZ) to allow the trucks to back into the loading area without subjecting the undercarriage to contaminated materials, thereby eliminating or greatly reducing the need to decon these vehicles. Any contaminated material that is spilled during the loading operation of each truck will be immediately swept up. If necessary the wheels of the truck will be brushed off. This procedure will allow the trucks to be loaded directly from the excavation without the potential contamination of another staging area. The lined corridor is shown on the attached Site Layout Plan.

## **2.0 SUBMITTALS**

Submittals will be made as applicable for work to be performed at the site and in accordance with Project Specifications. Daily project notes, copies of all documentation, photographs, and copies of manifests will be kept onsite and submitted at the completion of the project.

### **3.0 PROGRESS SCHEDULE**

CCCG is planning to mobilize on the site 10 Dec. 94. Excavation activities will begin 12 Dec. 94, and are expected to continue for one week. Backfill and decontamination activities will commence on 9 Dec. 94 and be complete 12 Dec. 94. Final site cleanup and restoration is expected to be completed in two days. CCCG is expecting to demobilize on or before 19 Dec. 94.

### **4.0 CONTRACTOR QUALITY CONTROL**

This Project requires a full-time Superintendent to manage the on-site activities. The Superintendent will be assisted by a Project Manager who will be onsite during the transportation and disposal stage. Additionally, Mr. Fred Stroud with the EPA is expected to be on-site during all excavation activities. Quality Control will be coordinated between these individuals to ensure a successful project.

### **5.0 CONSTRUCTION FACILITIES AND TEMPORARY CONTROLS**

#### **5.1 Staging**

CCCG intends to excavate contaminated soil and load directly into transport vehicles. Any overburden excavated but not designated for disposal is assumed to be suitable for backfill and will therefore be staged adjacent to the excavation for later use as fill.

#### **5.2 Communications**

Contractor's communications will consist of cellular and fixed base telephones. No further communication accommodations will be required.

#### **5.3 Power Requirements**

Contractor will utilize a existing 110/220 volt, single phase electrical power.

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#### 5.4 Excavation Plan

CCCG will excavate, load, transport, and dispose of up to 1000 truck yards of contaminated material. The approximate dimensions of the excavation, as shown on the attached Site Layout Plan, are 90 ft by 70 ft. The edge of the excavation will be kept at least 2 ft from the toe of the railroad berm and at least 10 ft from any buildings. The excavation will have straight walls for the distance from these endangered structures, then be sloped a minimum of 1:1. (Refer to Excavation Detail on Site Layout Plan.)

CCCG will use a 70,000-lb tracked excavator at the site. It will be placed in the southwest corner of the excavation boundary. The excavator will load the soil directly into transport vehicles. Approximate depth of the excavation will be 9 to 15-ft below existing grade. The material removal will begin from the existing excavation and continue eastward around the Franklin Brick Building, maintaining the sloping requirements, then northward. (Refer to Site Layout Plan.)

Excavated soil will be loaded directly onto trucks provided by Chemical Waste Management. A proper manifest will be prepared for each load. All transport vehicles will be covered and lined in accordance with federal regulation. These trucks will transport the soil to the Chemical Waste Management Adam Center landfill in Indiana for direct landfill before midnight 18 Dec. 94. In order to assure adequate transportation time, no soil will be loaded after 12 noon 18 Dec. 94.

All manifests will be signed by a designated ALCOA representative.

#### 5.5 Barricades

CCCG will use the existing fencing to prevent accidental entry onto the site, supplemented by temporary safety fencing and barricades as required. If traffic becomes congested or hazardous CCCG may place a signal man at the entrance Trousdale Drive to assist the driver merge into traffic.



## **6.0 DEMOLITION**

CCCG will use a 70,000-lb tracked excavator to excavate the material. This machine should be able to dig through the dense soils with rock and debris expected to be encountered. No further demolition is anticipated.

## **7.0 Disposal of Water**

Generation of water will be kept to a minimum. Water will be handled only as necessary to facilitate excavation activities. There appears to be approximately 20,000 gallons of water in the excavation. The first item of work will be to pump this water into a frac tank. An additional frac tank will be mobilized to the site if necessary for the initial water or any rainfall encountered. The water will be held for testing, characterization, possible treatment and release, and/or disposal in accordance with all applicable regulations and as directed by ALCOA.

## **8.0 Inclement Weather**

The safety and success of this project depends partly on suitable evaluation of the weather at the site and at the landfill. It is solely the responsibility of the CCCG Project Superintendent to stop work if necessary due to inclement weather. If the site becomes wet and slippery, work must be stopped due to personnel safety and contamination spreading considerations. If the landfill becomes too wet to allow trucks to enter and unload safely then they will not be loaded at the project site. The CCCG Superintendent will keep himself abreast of the current and forecast weather at both locations throughout the project.

## **9.0 Turfing & Site Restoration**

Suitable fill material will be imported to the site and placed into the excavation as required to restore site to its approximate condition prior to our excavation. CCCG will compact compressible fill to approximately 90% compaction using the equipment roll method.

